

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



August 1, 2003

**Agenda ID#2431**  
**Alternate to Agenda ID# 2200**

TO: PARTIES OF RECORD IN PETITION 01-10-008.

Enclosed is the Alternate Draft Decision of Commissioner Kennedy to the Draft Decision of Administrative Law Judge (ALJ) Malcolm.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting.

Comments on the alternate draft decision must be filed and served August 14, 2003. Reply comments are due August 18, 2003 at noon.

Pursuant to Rule 77.3 comments shall not exceed 15 pages and reply comments are limited to 5 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service. Please serve an additional copy to Commissioner Susan Kennedy (sk1@cpuc.ca.gov) and Timothy J. Sullivan (tjs@cpuc.ca.gov) via e-mail.

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:bb1

Attachment



Decision **ALTERNATE DECISION OF COMMISSIONER KENNEDY**

(Mailed August 1, 2003)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Petition of AT&T Communications of California, Inc. for a Commission Order Instituting Rulemaking to Adopt, Amend or Repeal a Regulation Pursuant to California Public Utilities Code Section 1708.5 to Implement Cost-Based Intrastate Carrier Access Charges.

Petition 01-10-008  
(Filed October 4, 2001)

**DECISION DENYING PETITION OF  
AT&T COMMUNICATIONS OF CALIFORNIA  
CONCERNING INTRASTATE CARRIER ACCESS CHARGES**

**Summary**

This order denies the petition of AT&T Communications of California, Inc. (AT&T) to institute a rulemaking to review intrastate carrier access charges. The term “access charges” refers to charges imposed by local exchange carriers (LECs) such as Pacific Bell Telephone Company (herein referred to as SBC) on interexchange carriers (IEC) such as AT&T for using the LEC’s local exchange network. Interexchange carriers use this switched access to originate and terminate long distance calls to the vast majority of California residential and business customers.

Although we recognize that circumstances have changed since the Commission last made significant changes to access charges in 1994, the Commission will not open a rulemaking proceeding at this time.

**AT&T's Petition**

On October 4, 2001, AT&T filed a petition pursuant to California Public Utilities Code Section 1708.5 asking the Commission to reduce intrastate access charges. AT&T argues that access charges for SBC and Verizon California (Verizon) should be based on “forward-looking economic costs” consistent with what AT&T perceives to be FCC requirements.

AT&T contends that the Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat 56, codified at 47 U.S.C. §§151, et seq. (Telecommunications Act)) requires the Commission to eliminate disparities in prices charged to IECs and LECs for similar or identical LEC services. AT&T argues that the Telecommunications Act requires cost-based pricing for interconnection services, including the transmission and routing of telephone exchange service and exchange access (Section 251(c)(2)(a)). It proposes that this standard applies equally whether the network function is used for local or switched access purposes.

AT&T contends that switched access is functionally equivalent to call termination for local exchange services. It observes that switched access is comprised of several wholesale network elements (unbundled network elements, or UNEs) and the price for each is currently set based on forward-looking costs. AT&T states that local switching, transport and tandem switching are combined to create access services. AT&T urges the Commission to eliminate what it considers an artificial distinction between “local” and “toll” interconnections and apply the UNE rate to both “toll” switched access and “local” call termination.

AT&T states that access charges were originally set at levels that provide subsidies from long distance services to local phone service. AT&T contends that Section 254(e) of the Telecommunications Act requires that all subsidies be

explicit, and the Commission must bring intrastate access charges into compliance with this mandate.

In support of its position, AT&T observes that the telecommunications marketplace has changed significantly since 1994, when the Commission last examined intrastate access charges. These changes include the Telecommunications Act, local toll competition, adoption of the new costing methods, and FCC reforms to interstate access charges. AT&T also refers to California's Universal Service program, and in particular the California High Cost Fund B, which removed from local rates any implicit subsidies to support basic phone service in high cost areas of the state served by large and mid-sized incumbent local exchange carriers (ILECs). AT&T argues that the change in how universal service subsidies are funded eliminates the need for inflated access charges to support local exchange service. The result, according to AT&T, is that the ILECs are making extraordinary profits from access charges.

In addition, AT&T maintains that the entry by Verizon and SBC into long distance markets requires changes to access charges. It believes SBC's high access charges in combination with its low toll rates does not permit competitors to recover their own costs and still keep their toll prices competitive.

**Responses to the Petition**

SBC, Verizon, a group of small LECs,<sup>1</sup> and Roseville Telephone Company (Roseville) filed comments opposing AT&T's petition. The Commission's Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) filed joint comments.

SBC and Verizon comment that AT&T's request to reduce access charges to cost ignores the Commission's long-standing policy of pricing intrastate access charges to promote universal service. AT&T would eliminate this subsidy from access charges to local basic rates but proposes no way to subsidize local service from another source.

SBC and Verizon contend that the Telecommunications Act does not require access charges to be based on TELRIC. They argue that the FCC has found that the Act preserves the legal distinction between long distance access charges and charges for UNEs.<sup>2</sup> SBC and Verizon cite a decision of the Eighth Circuit Court that upholds the FCC's findings in this regard to preserve certain rate regimes already in place.<sup>3</sup> The LECs argue that the Commission is within its discretion to determine how it will ensure affordable local service.

---

<sup>1</sup> The small LECs that filed jointly were Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Evans Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

<sup>2</sup> First Report and Order, *In the Matter of Access Charge Reform*, CC Docket No. 96-262, 12 FCC Rcd. 15,982, para. 1033 et seq. (May 16, 1997).

<sup>3</sup> *Competitive Telecommunications Association v. FCC*, 117 F.3d 1068 (8<sup>th</sup> Cir. 1997).

SBC contends that AT&T has not proposed a way to ensure that IECs will pass along the savings associated with lower access charges to their customers. It believes access charge reductions will only benefit AT&T shareholders. Verizon contends that AT&T fails to propose ways to offset a rate reduction through increases in other LEC rates, in contravention of Commission policy articulated in D.94-09-065. The small LECS and Roseville raise similar arguments to those presented by SBC and Verizon.

TURN and ORA oppose the petition on the grounds that access charge reform is not a high priority because other regulatory proceedings will provide more immediate ratepayers benefits, among them, the NRF review, the service quality review, review of UNE prices, the line sharing proceeding, and a review of universal service mechanisms adopted in D.96-10-066.

### **Discussion**

For the reasons set out below, this order denies AT&T's petition to institute a rulemaking to review intrastate carrier access charges.

The Commission recognizes that circumstances have changed since access charges have been last modified in 1994. But we agree with the joint comments of ORA and TURN in that the Commission is faced with limited resources and efforts should be expended on existing regulatory proceedings. Such proceedings include the review of the new regulatory framework (NRF), review of unbundled network elements (UNE) rates, the consumer Bill of rights proceeding and review of service quality rules, and also a proceeding on telecommunications infrastructure. These and other ongoing proceedings require the time and attention of Commission staff. We suggest that consideration on this issue be deferred to a later time so as not to funnel valuable resources away from existing proceedings.

Since the FCC is currently considering significant changes to the structure and levels of interstate charges in the context of other forms of intercarrier compensation, it would be prudent for this Commission to address access charges after the FCC has come to a conclusion. The Commission will then be in a better position to make a more informed decision without duplicating efforts.

We note that in order to fully analyze ratepayer impacts resulting from changes in access charges, the scope of such a ratesetting proceeding must be comprehensive. It would not be sensible to open a proceeding with a narrow scope that ignores the interconnectedness of related issues. The completion of ongoing Commission telecommunications proceedings will facilitate the rulemaking on access charges. The Commission acknowledges that there is the need to review access charges and that should be postponed so that Commission staff and parties can be given the opportunity to address all critical issues.

### **Comments on Proposed Decision**

The proposed decision of Commissioner Kennedy in this matter was mailed to the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure.

### **Findings of Fact**

1. Due to resource constraints and the number of ongoing telecommunications proceedings at the Commission, it is determined that a rulemaking proceeding will not be opened.
2. The Commission will defer the issue of access charges until after the FCC has concluded its consideration of developing a unified inter-carrier compensation regime.



**Conclusions of Law**

1. Pursuant to Public Utilities Code Section 1708.5, the Commission has authority to consider a petition requesting the initiation of a rulemaking to consider access charge reform.
2. To the extent that the petition requests the initiation of a rulemaking to consider access charge reform, it should be denied at this time.

**O R D E R**

**IT IS ORDERED** that:

1. The petition of AT&T Communications of California, Inc. is denied.
2. Petition 01-10-008 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.